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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

vs.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED JANUARY 2, 1930

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1 In United States Circuit Court of Appeals, Eighth Circuit

November Term, 1929

No. 8558

UNITED STATES OF AMERICA, APPELLANT

vs.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. Puckett, deceased, and Mattie Puckett Worley, intervener, appellees

Appeal from the District Court of the United States for the District of Nebraska

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Mr. James C. Kinsler, United States attorney; Mr. Geo. A. Keyser, assistant United States attorney; Mr. Philip M. Aitken, assistant United States attorney; Mr. Edson Smith, assistant United States attorney; Mr. Ambrose C. Epperson, assistant United States attorney; and Mr. F. H. Wagener, regional attorney, United States Veterans' Bureau, for appellant.

Mr. Clarence T. Spier and Mr. Charles Battelle, for appellees.

Before VAN VALKENBURGH and BOOTH, circuit judges, and DEWEY, district judge.

Statement of case

The United States Circuit Court of Appeals for the Eighth Circuit hereby certifies that a record on an appeal now pending before it discloses the following:

2 Emmet A. Puckett, deceased, was a duly enlisted soldier of the United States in the World War, having entered the service on April 2, 1917, as a private in Company A, 139th Infantry. He was discharged from the service March 18, 1918, by reason of physical disability for military service. He had a $10,000.00 term insurance contract under the provisions of the Act of October 6, 1917 (40 Stat. 398), not evidenced by written certificate or policy, the premiums upon which contract were paid from his monthly pay as a soldier until his discharge from military service, as aforesaid. The payments thus made were sufficient to keep said policy in force until April, 1918. After the soldier was discharged no further premiums were paid. While no written certificate was ever issued, receipts were given for payments taken out of the enlisted man's pay, the insurance granted being governed and controlled by the applicable statutes. It is conceded that, under the terms of the contract thus resulting, payments in the sum of $57.50 per month would be made to the beneficiary in the event of death, and to the assured in case of total and permanent disability,

3 during the term of such disability, until the full amount of

such term insurance should be paid. The mother of the soldier, intervener herein, was the designated beneficiary. At some time, the exact date not appearing, the soldier presented to the Veterans' Bureau a claim for total and permanent disability from date of discharge, at which time said insurance contract was in force. December 29, 1926, he was advised by the bureau that his claim for insurance benefits was rejected. The soldier died January 7, 1927. Pursuant to the provisions of section 19 of the World War veterans' act of 1924, the mother of the deceased, as administratrix, brought suit April 23, 1927, to recover, on the ground of total and permanent disability existing at time of discharge, insurance payments alleged to be due under said contract from March 18, 1918, the date of such discharge, to January 7, 1927, the date of the soldier's death. July 6, 1927, the mother of the deceased, in compliance with an order of court, made upon motion of the United States, filed her petition of intervention, in which, as beneficiary, she claimed any balance due under said insurance contract, in addition to the amount claimed in her suit as adminis-
4 tratrix. October 31, 1928, the jury returned a verdict in favor of the administratrix in the sum of six thousand and ninety-five dollars ($6,095.00) dollars, and for the intervener in the sum of three thousand nine hundred and five ($3,905.00) dollars. The judgment was entered accordingly on the same day. In neither the original petition nor petition in intervention was interest demanded; but at the trial and before the rendition of the verdict plaintiff and intervener in open court requested that the jury be instructed to include interest upon any amount that they might find due the plaintiff and intervener from the date said payments matured, and the court at that time orally reserved the matter of the allowance of the interest, the same to be determined in entering the judgment upon the verdict, should a verdict be rendered in favor of the plaintiff and intervener. No objection was made to the mere method of procedure adopted, and no objection is now made thereto. November 1, 1928, the plaintiff moved the court to allow her "interest at the rate of seven per cent per annum upon all unpaid payments of insurance from the date said several installments became due to October 31, 1928, and add such interest to the verdict rendered by the jury, in favor of the plaintiff in the above-entitled cause, and enter judgment therefor." The intervener filed motion to the same effect. December 14, 1928, counsel for plaintiff and intervener moved the court to allow an attorney's fee in accordance with the provisions of section 500 of the World War veterans' act as amended. December 28, 1928, the court entered a supplemental judgment, the material parts of which here follow:

"The court finds that the plaintiff as administratrix is entitled to have and recover interest at the rate of seven per cent per annum upon the insurance installments from the date they were due and that the first monthly installment was due April 1, 1918, and that

5 the amount of this interest which the plaintiff should recover up to October 31, 1928, is the sum of $2,655.99 and that the judgment heretofore entered in favor of the plaintiff shall draw interest from October 31, 1928, at seven per cent per annum.

"The court further finds that the intervener as beneficiary under said policy of insurance is entitled to have and recover interest upon the deferred payments due her from the date the same matured and until paid at the rate of seven per cent per annum and that the first installment was due her February 1, 1927, and that the amount of interest so due the intervener upon said installments of insurance due to October 31, 1928, is the sum of $84.36.

"The court further finds that the intervener recovered a judgment as beneficiary under said insurance policy in the sum of three thousand nine hundred five ($3,905.00) dollars and that of this amount there was, on October 31, 1928, the date of the rendition of the judgment herein, past due and owing to the intervener, installments in the sum of $1,265.00, and that she is entitled to to interest upon this amount at seven per cent per annum until paid, and that the balance of said three thousand nine hundred five ($3,905.00) dollars, to wit: $2,640.00, should be paid to the intervener at the rate of $57.50 per month commencing November 1, 1928, with interest at the rate of seven per cent upon each of said installments as long as the same remains past due and unpaid.

"The court further finds that a fee of 10 per cent of the amount recovered should be allowed to Clarence T. Spier and Charles Battelle as attorneys for the plaintiff and intervener in the above entitled cause and they are hereby allowed a fee of $1,274.03 to be paid as said payments are made to the plaintiff and intervener. The court further finds that the entry of the judgment rendered in the above entitled cause on October 31, 1928, shall stand and that this entry shall be supplemental thereto and be and become a part of said judgment.

"It is therefore ordered and adjudged that the plaintiff have and recover of and from the United States of America, in addition to the judgment heretofore rendered on the 31st day of October, 1928, in the above entitled cause, the sum of $2,655.99, being a total judgment in favor of the plaintiff of $8,750.99 with interest thereon at the rate of seven per cent per annum from October 31, 1928, and that the intervener have and recover, in addition to the judgment heretofore rendered on the 31st day of October, 1928, in the above entitled cause, the sum of $84.36, and that out of the total amount due the intervener she is entitled to have and recover payment at this time of $1,349.36 with interest at seven per cent per annum from October 31, 1928, and the balance of said judgment shall be paid in installments at the rate of $57.50 per month, the first payment to be made on the first day of November, 1928, and that said deferred payments shall bear interest at the rate of seven per cent per annum
6 from the date the same became due subsequent to October 31,

1928, and that the plaintiff and intervener have and recover their costs, for all of which execution is hereby awarded, to all of which findings and rulings and judgment the defendant excepts."

The contention of the Government is that—

"The court erred in rendering the supplementary judgment of date December 28, 1928, and then awarding to the appellees the following:

"a. Judgment for the amounts of insurance installments maturing after the action was instituted.

"b. Costs.

"c. Interest on the installments awarded to the appellees."

It is not disputed that in the absence of stipulation to the contrary, or of a statute allowing it, interest can not be recovered against the United States upon unpaid accounts or claims. (Seaboard Air Line Ry. vs. United States, 261 U. S. 299; Boston Sand Co. vs. United States, 278 U. S. 41, 47.) But appellees place reliance upon the language employed in Standard Oil Co. vs. United States, 267 U. S. 76, in a suit upon a marine insurance policy, to-wit:

"When the United States went into the insurance business, issued policies in familiar form, and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents in such business. The policies promised that claims would be paid within thirty days after complete proofs of interest and loss had been filed with the Bureau of War Risk Insurance."

7 The Government contends that this pronouncement is limited to marine insurance of the kind provided in the act of September 2, 1914 (38 Stat. 711, 712), and has no application to the term insurance contract provided by act of October 6, 1917 (40 Stat. 398), and appeals to the following language of the opinion in White vs. United States, et al, 270 U. S. 175, 180:

"The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good."

The interior Federal courts are not in harmony as to the relationship of the United States to insurance contracts such as that here involved, nor as to the allowance of interest, the awarding of costs in such cases, and the authority to render judgment against the United States upon installments not yet due and payable under the terms of such insurance contracts. For the divergent views entertained, reference is made, among others, to the following cases:

Birmingham vs. United States, 4 Fed. (2d) 508, 509; United States vs. Lyke, 19 Fed. (2d) 876; United States vs. Napoleon et al, 296 Fed. 811; Jackson vs. United States, 24 Fed. (2d) 981; Gianakouras vs. United States, 33 Fed. (2d) 936; Jackson vs. United States, 34 Fed (2d) 241.

8 *Questions certified*

This court, being in doubt, desires the instruction of the Supreme Court upon the following questions, a decision of which is deemed indispensable to a determination of this case now before it, and to a proper discharge of its duties herein:

Question 1.—Upon the facts above stated does the United States, as matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?

Question 2.—In case of a finding in favor of plaintiff and intervener, may judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?

Question 3.—In case of a finding and judgment in favor of the plaintiff and intervener, is interest allowable against the United States upon the monthly installments from the date they are found to be due?

9 *Question 4.*—In case of a finding and judgment in favor of plaintiff and intervener, may costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

ARBA S. VANVALKENBURGH,
United States Circuit Judge.
WILBUR F. BOOTH,
United States Circuit Judge.
CHAS. A. DEWEY,
United States District Judge.

(The judges who sat in the Circuit Court of Appeals on the hearing of the case.)

10 Clerk's certificate to foregoing omitted in printing.

U. S. GOVERNMENT PRINTING OFFICE: 1930